



STATE BOARD OF EQUALIZATION

To Mr. Glenn Bystrom
From Gary Jugum
Subject Non-Attorney Opinions

I have reviewed your memorandum of October 1, 1990 to --- --- ---

We are in agreement with his conclusion, as follows:

Motion Pictures - "Bid Prints" used exclusively to evaluate market potential are within the definition of qualified production services and tax does not apply to charges for them. However, if the bid print is subsequently used for exhibition or broadcast purposes, the exclusion from taxation is negated and the seller is liable for sales tax on the transaction. Sellers of prints which may be used as bid prints or as. release prints may find it desirable to amend their contracts to provide for reimbursement of any tax which may subsequently be found to be due. 10/1/90



STATE BOARD OF EQUALIZATION

(916) 445-0387

October 1, 1990

Dear

This is in response to your letter dated September 4, 1990 in which you requested advice regarding "Bid Prints" and "Release Prints".

You gave an example whereby a distributor rather than placing an order for a large quantity of "release prints" will instead place an order for a limited number of "bid prints". The prints will be used to evaluate market potential, or to solicit firm commitments from theatre chains. Often these prints are made from the final edited version of the motion picture and after use as "bid prints" are used as release prints.

You ask whether such prints which are ordered as "bid prints" and initially used as "bid prints" but fit the definition of a "release print" and are subsequently used as "release prints" are subject to tax.

Sales and Use Tax Regulation 1529 defines a "release print" as a copy of a qualified motion picture complete in all respects, which is of a quality suitable for exhibition. The regulation further provides that the sale of a release print to a person for exhibition or broadcast is a retail sale subject to sales tax.

Regulation 1529 defines a "bid print" as an interim edited preview print used for evaluating market potential. Bid prints are classified as qualified production services, the charges for which are excluded from the definition of a "sale" and are therefore not subject to tax.

Generally the sale of "release prints" is subject to tax. However, the sale of a film which meets the definition of a release print (of a quality suitable for exhibition) could nevertheless be exempt from tax if the film is used solely for evaluating market potential and not for exhibition or broadcast.

In such a case, the film would qualify as a bid print and would be excluded from the definition of a sale.

As you can see, whether the sale of such a film is subject to tax depends upon its ultimate use.

The exclusion applies only to qualified production services. Film which is used for evaluating market potential is a qualified production service. However, film which is used for exhibition or broadcast (either initially or ultimately) is not a qualified production service and therefore does

not qualify for the exclusion. The sale of "bid prints" is excluded from tax under the presumption that they will be used solely for the purpose of evaluating market potential and therefore are the product of qualified production services. However, if such prints are used for other purposes (exhibition or broadcast) the exclusion is negated. If the exclusion is negated, the seller becomes liable for the sales tax measured by the selling price of the prints to the purchaser.

In other words, if a customer orders a "bid print" which is subsequently used for exhibition purposes, the sale does not qualify for the exclusion and the seller is liable for the sales tax on the transaction.

I realize a seller may not know the ultimate use of such a print when it is sold, or could be misled by the purchaser. Therefore, you may wish to add some language to your contracts for non-taxable sales of bid prints (which are of a quality suitable for exhibition) to provide that the purchaser will reimburse you for any taxes which are later found to be due on these claimed non-taxable transactions. While the Board has no authority to enforce such a contractual agreement, this could provide you with protection under civil law. You should consult with your legal representatives before making any changes to your sales agreements.

I hope this information is helpful. If you have any questions, please let me know.

Sincerely

Glenn A. Bystrom
Principal Tax Auditor

GAB:gjm
0085A

cc: Hollywood Compliance
Mr. Ron Dick